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MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY

United States District Court		District
Name of Movant ALEJANDRO SANTIAGO	Prisoner No. 16821-424	Case No. 04-CR-245
Place of Confinement FEDERAL CORRECTIONAL INSTITUTION P.O. BOX 6000 GILMER, WV 26351-6000		

UNITED STATES OF AMERICA

V.

ALEJANDRO SANTIAGO
(name under which convicted)**MOTION**

- Name and location of court which entered the judgment of conviction under attack UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION
- Date of judgment of conviction AUGUST 11, 2006
- Length of sentence 360-months
- Nature of offense involved (all counts) POSSESSION OF CRACK COCAINE IN VIOLATION OF 21 U.S.C. §841(a)(1) and 18 U.S.C. §922(g)(1) and 21 U.S.C. §851 for PRIOR CONVICTIONS

FILED

- What was your plea? (Check one)
 - Not guilty ☐
 - Guilty ☒
 - Nolo contendere ☐

MAR 10 2008 *aw*
 Mar 10, 2008
 MICHAEL W. DORDINS
 CLERK, U.S. DISTRICT COURT

If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or indictment, give details:

Petitioner had a plea agreement within the case. Only to two-counts within the indictment.

- If you pleaded not guilty, what kind of trial did you have? (Check one)
 - Jury ☐ N/A
 - Judge only ☐
- Did you testify at the trial?
Yes ☐ No ☒
- Did you appeal from the judgment of conviction?
Yes ☒ No ☐

08CV 1415
JUDGE GETTLEMAN
MAGISTRATE JUDGE MASON

9. If you did appeal, answer the following:

(a) Name of court UNITED STATES COURT OF APPEALS SEVENTH CIRCUIT

(b) Result AFFIRMED

(c) Date of result _____

10. Other than a direct appeal from the judgment of conviction and sentence, have you previously filed any petitions, applications, or motions with respect to this judgment in any federal court?

Yes ☐ No ☒

11. If your answer to 10 was "yes," give the following information:

(a) (1) Name of court N/A

(2) Nature of proceeding _____

(3) Grounds raised N/A

(4) Did you receive an evidentiary hearing on your petition, application or motion?

Yes ☐ No ☒

(5) Result N/A

(6) Date of result _____

(b) As to any second petition, application or motion give the same information:

(1) Name of court _____

(2) Name of proceeding _____

(3) Grounds raised N/A

(3)

(4) Did you receive an evidentiary hearing on your petition, application or motion?

(5) Result _____

(6) Date of result _____

(c) Did you appeal, to an appellate federal court having jurisdiction, the result of action taken on any petition, application or motion?

(1) First petition, etc. Yes ☐ No ☒

(2) Second petition, etc. Yes ☐ No ☒

(d) If you did not appeal from the adverse action on any petition, application or motion, explain briefly why you did not:

N/A

N/A

12. State *concisely* every ground on which you claim that you are being held in violation of the constitution, laws or treaties of the United States. Summarize briefly the facts supporting each ground. If necessary, you may attach pages stating additional grounds and facts supporting same.

CAUTION: If you fail to set forth all grounds in this motion, you may be barred from presenting additional grounds at a later date.

For your information, the following is a list of the most frequently raised grounds for relief in these proceedings. Each statement preceded by a letter constitutes a separate ground for possible relief. You may raise any grounds which you have other than those listed. However, you should raise in this motion all available grounds (relating to this conviction) on which you based your allegations that you are being held in custody unlawfully.

Do not check any of these listed grounds. If you select one or more of these grounds for relief, you must allege facts. The motion will be returned to you if you merely check (a) through (j) or any one of these grounds.

- (a) Conviction obtained by plea of guilty which was unlawfully induced or not made voluntarily or with understanding of the nature of the charge and the consequences of the plea.
- (b) Conviction obtained by use of coerced confession.

(4)

- (c) Conviction obtained by use of evidence gained pursuant to an unconstitutional search and seizure.
- (d) Conviction obtained by use of evidence obtained pursuant to an unlawful arrest.

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- (e) Conviction obtained by a violation of the protection against self-incrimination.
 - (f) Conviction obtained by the unconstitutional failure of the prosecution to disclose to the defendant evidence favorable to the defendant.
 - (g) Conviction obtained by a violation of the protection against double jeopardy.
 - (h) Conviction obtained by action of a grand or petit jury which was unconstitutionally selected and impaneled.
 - (i) Denial of effective assistance of counsel.
 - (j) Denial of right of appeal.

A. Ground one: Ineffective Assistance of Counsel under the Sixth Amendment

right to effective assistance of counsel and his Fifth Amendment

Supporting FACTS (state *briefly* without citing cases or law): rights to Due Process of law.

Counsel never once objected to the subject matter jurisdiction for

knowingly and possessing ammunition affecting interstate commerce.

Accordingly, this prosecution prejudiced defendant's constitutional
rights by charging defendant with section 922(g)(1).

B. Ground two: This Court would violate the Sixth Amendment by rebuttably
presuming that the defendant's sentence within the guidelines range

Supporting FACTS (state *briefly* without citing cases or law): was reasonable. This Circuit

and other circuits agrees that a sentencing court must now consider

all factors—even factors prohibited by formerly mandatory guidelines

in determining the type of sentence that satisfies the sentencing

mandate of section 3553(a). The district court remains obligated

to consult and correctly calculate the guidelines, after which it

C. Ground three: may impose a more lenient sentence as long as it is reason-
able.

Supporting FACTS (state *briefly* without citing cases or law): N/A

D. Ground four: _____

Supporting FACTS (state *briefly* without citing cases or law): A retroactive amendment for re-
duction of sentence based on 2007 Guideline Amendment Nine which be-
came effective on November 1, 2007, and caused a two-level reduction
in defendant's base offense level for crack(cocaine base).

13. If any of the grounds listed in 12A, B, C, and D were not previously presented, state briefly what grounds were not so presented, and give your reasons for not presenting them: _____

 N/A

14. Do you have any petition or appeal now pending in any court as to the judgment under attack?

Yes ☐ No ☐

15. Give the name and address, if known, of each attorney who represented you in the following stages of the judgment attacked herein:

(a) At preliminary hearing _____, N/A

(b) At arraignment and plea _____

(c) At trial _____

(d) At sentencing _____, N/A

(6)

AO 243 (Rev. 2/95)

(e) On appeal _____

(f) In any post-conviction proceeding _____

(g) On appeal from any adverse ruling in a post-conviction proceeding

16. Were you sentenced on more than one count of an indictment, or on more than one indictment, in the same court and at approximately the same time?

Yes ☒ No ☐

17. Do you have any future sentence to serve after you complete the sentence imposed by the judgment under attack?

Yes ☐ No ☒

(a) If so, give name and location of court which imposed sentence to be served in the future:

(b) Give date and length of the above sentence:

(c) Have you filed, or do you contemplate filing, any petition attacking the judgment which imposed the sentence to be served in the future?

Yes ☐ No ☒

Wherefore, movant prays that the Court grant him all relief to which he may be entitled in this proceeding.

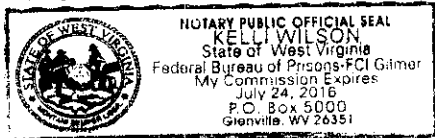
Signature of Attorney (if any)

I declare under penalty of perjury that the foregoing is true and correct. Executed on

February 28th, 2008

Date

Kelli Wilson 2-28-08



Alexander Santiago
Signature of Movant